

# ROUTING AND TRANSMITTAL SLIP

Date

5/12/92

TO: (Name, office symbol, room number,  
building, Agency/Post)

Initials

Date

1.

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Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

2x

DO NOT use this form as a RECORD of approvals, concurrences, disposals,  
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

5041-102

☆ U.S. G.P.O. 1991 281-762/40013

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA  
FPMR (41 CFR) 101-11.206

~~Regina~~ Done

5/12/92

ORIGINAL  
R.D.

Here is the Pennzoil Agreement  
for your review. Also, have  
Dave Wright review it since  
Vince is not in. Call me when you're  
finished  
Thanks  
Judy Haykel 18253

Judy would like  
to send out today

ORIGINAL  
(Red)

Jan

Told Judy attached Doc O.K.  
1-16-5

ORIGINAL  
(Rec)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF: :  
:   
Pennzoil Products Company, :  
: SPCC Docket No.  
Respondent :  
: WV-89-009  
:   
Proceeding Under Section :  
311(j) of the Clean Water :  
Act, as amended, 33 U.S.C. :  
§ 1321(j), (as saved pursuant :  
to Section 6001(d) of the Oil :  
Pollution Act of 1990, 33 U.S.C. :  
§ 2751(d)) :

CONSENT AGREEMENT

The Parties to this Consent Agreement, Pennzoil Products Company ("Respondent") and the United States Environmental Protection Agency ("EPA"), have agreed to the entry of this Consent Agreement and to all terms and conditions contained herein. It is therefore Agreed as follows:

I. GENERAL PROVISIONS

A. On January 28, 1992, EPA issued a Notice of Violation and Proposed Civil Penalty ("NOV") to Pennzoil Products Company alleging violations of 40 C.F.R. Part 112 (promulgated pursuant to Section 311(j)(1) of the Clean Water Act, as amended ("CWA"), 33 U.S.C. § 1321(j)).

B. The Respondent consents to and will not contest EPA jurisdiction regarding the NOV or this Consent Agreement.

C. Respondent expressly waives its right to a hearing on any issue of fact or law set forth in the NOV or this Consent Agreement.

D. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law set forth in the NOV or this Consent Order.

E. Respondent Consents to the issuance of this Consent Agreement and the Order attached hereto, and consents, for the purposes of settlement, to the payment of a civil penalty of \$12,960.00.

F. Each Party to this action shall bear its own costs and attorney's fees.

## II. FINDINGS OF FACT

A. Pennzoil Products Company is a corporation organized under the laws of Delaware.

B. Respondent has owned and/or operated a non-transportation-related on-shore oil storage facility known as the Etowah Terminal at 1015 Barlow Drive, Charleston, West Virginia ("Facility") since 1930. The Facility is located in Kanawha County approximately 25 yards from the Elk River, a navigable water of the United States.

C. Respondent stores approximately 4,000,000 gallons of oil at the Facility.

D. Respondent's Facility, because of its location, can reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines as described in 40 C.F.R. §110.3.

E. Respondent's Facility was subject to the requirements of 40 C.F.R. Section 112 from June 30, 1983 until the date of the NOV.

F. An inspection of the Respondent's Facility, conducted by EPA on August 1, 1989, revealed that Respondent failed to review its SPCC Plan twice between June 30, 1983 and August 1, 1989.

G. Said inspection of August 1, 1989 also revealed that the secondary containment dike walls were cracked and were breached to allow above ground pipes to pass through the dike wall. Therefore, the dike walls were not sufficiently impervious to contain spilled oil.

## III. CONCLUSIONS OF LAW

A. Respondent is the owner and/or operator of a non-transportation-related on-shore facility engaged in, among other things, the storage of oil and which, due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines within the meaning of 40 C.F.R. § 112.1(b).

B. Respondent was required to review its SPCC Plan in accordance with 40 C.F.R. § 112.5 every three (3) years from the date its Facility became subject to 40 C.F.R. § 112.5.

C. Respondent's failure to review its SPCC Plan every three years constitutes a violation of 40 C.F.R. § 112.5 and is actionable pursuant to 40 C.F.R. §§ 112.6 and 114.2(h).

D. Respondent was required to provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course in accordance with 40 C.F.R. § 112.7(c)(1).

E. Respondent failed to provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course since its dikes, berms or retaining walls were not sufficiently impervious to contain spilled oil in accordance with 40 C.F.R. § 112.7(c). Respondent's failure constitutes a violation actionable pursuant to 40 C.F.R. § 114.2.

F. Respondent is liable for civil penalties pursuant to 40 C.F.R. Part 114 for its violations of 40 C.F.R. § 112.7(c) and is liable for civil penalties pursuant to 40 C.F.R. §§ 112 and 114 for its violations of 40 C.F.R. § 112.5.

**IT IS SO AGREED.**

**FOR RESPONDENT:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Pennzoil Products Company

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judith R. Hykel  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III

